

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2447 of 2018**

Arising Out of PS. Case No.-84 Year-2016 Thana- KORHA District- Katihar

Sunny Sharma @ Sanni Sharma, Son of Shushil Sharma, Resident of Village-
Mushapur, P.S.- Korha, District- Katihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 1455 of 2018

Arising Out of PS. Case No.-84 Year-2016 Thana- KORHA District- Katihar

Sunita Devi @ Tuniya, wife of Shushil Sharma, Resident of Village-
Mushapur, P.S.- Korha, District- Katihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 2447 of 2018)

For the Appellant/s : Mr. N. K. Agrawal, Sr. Advocate.
Mr. Krishna Chandra, Advocate.

For the Respondent/s : Mr. Sri Abhay Kumar, APP.

(In CRIMINAL APPEAL (SJ) No. 1455 of 2018)

For the Appellant/s : Mr. N. K. Agrawal, Sr. Advocate.
Mr. Krishna Chandra, Advocate.

For the Respondent/s : Mr. Sujit Kumar Singh, APP.

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
C.A.V. JUDGMENT**

Date : 28-06-2021

These two appeals arise out of common judgment
of conviction and sentence dated 14.03.2018 passed in Sessions
Trial No. 98 of 2017 by learned 3rd Additional Sessions Judge,
Katihar whereby both the appellants were found guilty for
offence under Section 304B/34 of the Indian Penal Code and
have been sentenced to undergo rigorous imprisonment for 10



years. Besides imprisonment, a fine of Rs.3000/- has been imposed against both the appellants and in default of payment of fine, 6 months rigorous imprisonment has been awarded.

2. The prosecution case is that Mr. Ajit Prasad Singh, the officer-in-charge of Korha Police Station (PW-7) was on patrolling duty in the evening of 28.04.2016. He got information that in village Musapur within Korha Police Station, a female had committed suicide by hanging herself. To verify the information, the police team including PW-7 reached village Musapur at the house of the appellants. A room was found closed and the back side window was open. PW-7 saw that a female was hanging with the ceiling fan. PW-7 informed to the senior police officer and called services of Circle Officer, Korha as local Magistrate and in presence of the public representatives, the door of the room was broken, the hanging body was brought down and an inquest report was prepared which is available as Ext.-5. Thereafter, father of the deceased, namely, Chandrashekhar Prasad (PW-10) was informed. In the next morning at 10:30 a.m. on 29.04.2016, PW-10 reached at the police station and gave his written report. On the basis whereof, Korha P.S. Case No. 84 of 2016 was registered under Section 304B/34 of the Indian Penal Code and after



investigation, the police submitted chargesheet. Accordingly the appellants were put on trial.

3. The prosecution case as disclosed in the written report of PW-10 Chandrashekhar Prasad is that his daughter Suman Devi was married with appellant Sunny Sharma on 24.04.2015. According to capacity and freewill, gifts were given at the time of marriage. However, after few days, the daughter of the informant reported that appellant Sunny Sharma asked to demand Rs. 5 lacs from the informant for opening a dispensary and Rs. 4 lacs for a four wheeler. In due course, the daughter of the informant went to the house of the informant. Again on insistence of her in-laws, she came to her matrimonial house and for non-fulfillment of the aforesaid demand, all the family members committed dowry death on 28.04.2016. Another appellant is mother of appellant Sunny Sharma.

4. Mr. N. K. Agrawal, learned Senior counsel for the appellants contends that a suicidal note left by the deceased was seized by the police from the room of the deceased where her dead body was found and the suicidal note has been brought on the record as Ext.-A. The genuineness of the suicidal note to be in the writing of the deceased has not been denied by any of the prosecution evidence. The suicidal note has been proved by



PW-2 who is a relative of the deceased. The suicidal note does not speak about any demand of dowry or any other illegal demand by any of the appellants or any other in-laws.

A careful perusal of the same would reveal that the deceased was in depression as she found herself unable to adjust in the family of the appellants for the reason that none of the family members were happy with her in spite of her best efforts for peaceful life in the family. According to learned counsel, Ext.-A is a document of the prosecution which cannot be ignored and the same makes the testimony of other prosecution witnesses on demand of dowry and torture for the same, shaky and unworthy of credence.

5. Mr. Sujit Kumar Singh, learned APP for the State contends that the learned trial Judge has discussed about Ext.-A in the impugned judgment and has placed reliance on the testimony of the prosecution witnesses, especially PW-8 Lalita Devi, the mother of the deceased, PW-9 Sunita Devi, the aunt of the deceased and PW-10 Chandrashekhar Prasad, the father of the deceased, who have consistently deposed about the demand of dowry and torture for the same soon before death. Since the victim died within a year of her marriage in unnatural circumstances in the house of the appellants and the prosecution



witnesses have consistently alleged about demand of dowry and torture for the same, the conviction should not be interfered for mere technicalities.

6. PW-1 Umesh Yadav has been declared hostile by the prosecution as he deposed that he knows nothing about the occurrence.

PW-2 Anil Kumar has also been declared hostile by the prosecution. During cross-examination, the suicidal note was placed before him and he admitted that the writing and signature on that is of the deceased. On his proof, suicidal note was marked as Ext.-A.

PW-7 the investigating officer in Para-18 of his evidence stated that in Para-17 of the case diary he has mentioned about the suicidal note seized by him and the suicidal note was identified by the father of the deceased (PW-10) who admitted that the writing is of the deceased.

PW-3 Rajendra Yadav deposed that wife of Sunny Sharma committed suicide. On being called by the police, he had gone to the house of the appellant Sunny Sharma. So many people including the Circle Officer was there, the room was locked from inside, the door was broken to open and the dead body was taken out. Inquest report was prepared in his presence



and he had signed on the inquest report. The inquest report is Ext.-5 on the record.

PW-4 Md. Nasiruddin is a witness on the seizure list and has admitted that seizure was made in his presence and the same bears his signature. The seizure list is available as Ext.-8. The same refers to seizure of the suicidal note besides other material including a printed saree and a diary containing writing in Hindi and English.

PW-5 Dr. Surendra Jit Sarkar and PW-6 Dr. Amar Kumar Deo had performed jointly post mortem examination, marked as Ext.-3 and the doctors were of the opinion that death was due to asphyxia arising out of hanging. The inquest report as well as post mortem report is specific that no other injury on any part of the body of the deceased was found.

PW-7 the investigating officer besides supporting the investigation done by him, deposed that he had prepared the seizure list of the suicidal note of the deceased.

PW-8 Lalita Devi, PW-9 Sunita Devi and PW-10 Chandrashekhar Prasad who are parents and aunt of the deceased have consistently deposed that after marriage, there was demand of dowry in the form of 5 lacs cash and a four-wheeler from the deceased and other family members and for



non-fulfillment of dowry demand, dowry death was caused.

7. On careful perusal of the suicidal note addressed separately to the husband of the deceased, to the brother of the deceased, to the father of the deceased and to the mother of the deceased, none of the suicidal notes contains any allegation of demand of dowry or any other illegal demand. The only statement is regarding unhappy relationship with the family members and time without numbers, the deceased stated that she was also responsible for that though she was not intending to be so.

8. The suicidal note, uncontroverted by the prosecution, creates serious doubt that the case was of dowry death. In face of the suicidal note, the testimony of the prosecution witnesses cannot be wholly relied as the suicidal note makes the prosecution case doubtful. There is no material in the form of any complain or written letter of the period prior to death. The learned trial Judge has also not said that the suicidal note contains averment regarding demand of dowry and torture for non-fulfillment of the same. Even if it is assumed, as has been done by the learned trial Judge, that the victim felt tortured in the matrimonial family that would not suffice to draw the ingredients of dowry death. Hence, in my view, the



appellants deserve acquittal giving benefit of doubt.

9. Accordingly, the impugned judgment and sentence are hereby set aside and these appeals are allowed.

Let the appellant Sunny Sharma who is in custody since last five years be set free at once.

Appellant Sunita Devi is on bail. She is hereby exonerated from the liability of the bail bond.

(Birendra Kumar, J)

mantreshwar/

AFR/NAFR	N.A.F.R.
CAV DATE	22.06.2021
Uploading Date	28.06.2021
Transmission Date	28.06.2021

